

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WALLACE D. COWARD

Plaintiff,

v.

Q. THOMAS, et al.

Defendants.

CIVIL ACTION NO. 23-2429

ORDER

AND NOW, this 5th day of April 2024, upon consideration of Plaintiff Wallace D. Coward's Second Amended Complaint [Doc. No. 20], which the Court construes as raising failure to protect claims against Defendants Sergeant Q. Thomas and Correctional Officer McPherson and a deliberate indifference claim against Defendant Dr. Flower in their individual capacities, it is hereby **ORDERED** that:

1. Any request for injunctive relief is **DISMISSED AS MOOT**.
2. The Court's November 2, 2023 Order [Doc. No. 13] is **VACATED** to the extent it dismissed Coward's failure to protect claims against Thomas and McPherson with prejudice.
3. The Clerk of Court is **DIRECTED** to **TERMINATE** Defendant Doctor Sambria as a party to this case, as Doctor Sambria is not named in the Second Amended Complaint and there are no allegations presently raised against them.
4. The Clerk of Court shall issue summonses for Defendants Thomas, McPherson and Dr. Flower so that Coward may proceed on his remaining claims—failure to protect claims and a deliberate indifference claim—as set forth in the accompanying Memorandum Opinion. Service of the summonses and the Second Amended Complaint [Doc. No. 20] shall be made

upon the Defendants by the U.S. Marshals Service along with a copy of this Order and the Court's accompanying Memorandum Opinion. Coward will be required to complete USM-285 forms so that the Marshals can serve the Defendants. Failure to complete those forms may result in dismissal of this case.

5. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting *pro se*). Service may be made by mail. Proof that service has been made is provided by a certificate of service. The certificate of service should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

"I, (name), do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same in the U.S. mail, properly addressed, this (day) of (month), (year).

(Signature)"

6. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and Local Rules are to be followed. Coward is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal.

7. Coward is specifically directed to comply with Local Rule 26.1(f) which provides that "[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Coward shall attempt to

resolve any discovery disputes by contacting Defendants' counsel directly by telephone or through correspondence.

8. No direct communication is to take place with the United States District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk of Court.

9. In the event a summons is returned unexecuted, it is Coward's responsibility to ask the Clerk of Court to issue an alias summons and to provide the Clerk with the Defendant's correct address, so service can be made.

10. The parties should notify the Clerk's Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.